



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200835036

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List 408.00-00

JUN - 3 2008

T:EP:RA:1T3

Legend:

Company A =

IRA X =

Plan A =

Date E =

Date F =

Date G =

Amount H =

Amount I =

Amount J =

Dear

This is in response to your request dated December 4, 2007, as supplemented by correspondence dated March 6, 2008, for a ruling to waive the 60-day rollover requirement contained in sections 408(d)(3) and 402(c)(3) of the Internal Revenue Code (the "Code").

Under penalty of perjury, you have submitted the following facts and representations:

Taxpayer A represents that he received a distribution from IRA X totaling Amount H and a distribution from Plan A totaling Amount I. Taxpayer A asserts that his failure to accomplish a rollover of either distribution within the 60-day period prescribed by either section 408(d)(3) or section 402(c)(3) was due to the delay of a financial planner to provide Taxpayer A with timely advice regarding rolling over Amounts H and I to a qualified trust which had not yet been established. Taxpayer A subsequently used the Amount H and Amount I, together with other non-retirement amounts, on Date G to purchase assets for Taxpayer A's new business.

On Date E, 2006, Taxpayer withdrew Amount H from IRA X and on Date F, 2006, withdrew Amount I (less federal withholding of Amount J) from Plan A. Based on advice he had received from a financial advisor, Taxpayer A intended to roll over Amounts H and I to a qualified plan to be established by his new business. Taxpayer A asserts that he contacted the financial advisor twice within the applicable 60 day period(s) but did not receive the information he needed until Date G, 2007 which was after the 60 day rollover period(s) had expired.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement(s) contained in sections 408(d)(3) and 402(c)(3) of the Code, with respect to the distributions of Amounts H and I respectively.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over Amounts H and I, or any portion thereof, to either an IRA or any other "eligible retirement plan". Taxpayer A has stated that he did not have the information to set up the type of rollover account that he wished. However, the ability to timely roll over Amounts H and I to a rollover IRA or, if applicable, another "eligible retirement plan", was at all times within his control. The information submitted by Taxpayer demonstrates that he is solely responsible for failing to timely deposit Amounts H and I into an IRA or another "eligible retirement plan".

Therefore, pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service declines to waive the 60-day rollover requirement(s) with respect to the distribution of Amounts H and I. Thus, the contribution of either Amount H or Amount I to either an IRA or any other "eligible retirement plan" will not be considered a valid rollover because the 60-day requirement under either section 408(d)(3) or section 402(c)(3)(B) of the Code with respect to such contribution will not be satisfied.

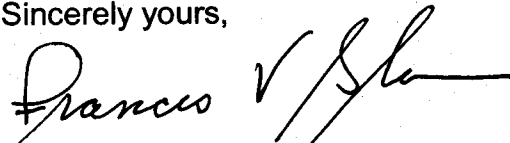
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact me at
Please address all correspondence to SE:T:EP:RA:T:3 .

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan", with a stylized flourish at the end.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose